

**Rhode Island Supreme Court  
Ethics Advisory Panel Op. 2013-01  
Issued February 14, 2013**

**FACTS:**

The inquiring attorney manages several of his/her law firm's office locations. The law firm plans to hire an experienced "claims adjuster/paralegal." The adjuster will be a full-time employee of the law firm. He or she would have normal paralegal duties, such as calling the firm's clients to track medical appointments and medical treatment, requesting medical bills and reports, and sending bills and reports to insurance companies. Under the inquiring attorney's direct supervision, the claims adjuster/paralegal also will communicate with insurance company adjusters about claims, draft demand letters, and negotiate settlements. The inquiring attorney states that the adjuster will have no authority to send out demand letters to insurance company claims adjusters, or to negotiate any settlement, without the inquiring attorney's authority. The inquiring attorney states that only the inquiring attorney will review settlement offers with clients. He/she further states that the inquiring attorney will make recommendations about settlement to clients and that the ultimate decisions about settlement will be made by the clients.

The law firm proposes to pay the adjuster/paralegal a base salary, plus a quarterly bonus. The bonus will be calculated on the basis of four factors, "including but not limited to things such as:

- 1.) Their attitude displayed toward my other staff and my clients;
- 2.) The number of cases they assist me in settling;
- 3.) The fees generated from said settled cases; and
- 4.) The improvement displayed in the [City X] office in a number of criteria including but not limited to a) getting the staff to obtain medical records in a more timely fashion, and b) getting the staff to get demand letters out to insurers."

The inquiring attorney asks whether the proposed compensation is permissible.

**ISSUE PRESENTED:**

May the inquiring attorney's law firm base the adjuster/paralegal's quarterly bonus on the number of cases that the adjuster/paralegal assists in settling, and on the attorney's fees generated from those cases?

OPINION:

No. The proposed compensation arrangement is a fee-sharing arrangement with a nonlawyer, and violates Rule 5.4(a) of the Rules of Professional Conduct.

REASONING:

Rule 5.4 entitled “Professional independence of a lawyer” applies to this inquiry. In pertinent part the Rule states as follows:

**Rule 5.4. Professional independence of a lawyer.** (a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and

(4) a lawyer or law firm may agree to share a statutory or tribunal-approved fee award, or a settlement in a matter eligible for such an award, with an organization that referred the matter to the lawyer or law firm if: (i) the organization is one that is not for profit; (ii) the organization is taxexempt under federal law; (iii) the fee award or settlement is made in connection with a proceeding to advance one or more of the purposes by virtue of which the organization is tax-exempt; and (iv) the tribunal approves the fee-sharing arrangement.

With four narrow exceptions, Rule 5.4(a) prohibits a lawyer or law firm from paying a nonlawyer a portion of attorney's fees generated by a particular matter. The proscription against fee-sharing is intended to protect a lawyer's independent judgment. The fee-sharing prohibition extends to all nonlawyers, including employees of a lawyer or law firm.

The inquiring attorney suggests in his/her inquiry that the proposed compensation falls under the third exception in Rule 5.4(a) which permits lawyers to include nonlawyer employees in a compensation plan, even though the plan is based on a profit-sharing arrangement. The Panel does not agree.

The inquiring attorney sets forth four factors that the law firm will consider in calculating the adjuster/paralegal's bonus. The Panel will not comment on the first and fourth factors which are subjective criteria that are outside the area of legal ethics. The Panel's focus is on the second and third factors, namely, the number of cases settled, and the fees generated by those settled cases.

Subparagraph (3) of Rule 5.4(a) permits a lawyer or law firm to include nonlawyer employees in profit-sharing arrangements, but only if the profits being shared are not tied to particular clients or particular matters. ABA Annotated Model Rules of Professional Conduct, 7<sup>th</sup> ed. (2011) at 461. The adjuster's quarterly bonus in this inquiry would be calculated on the basis of the attorney's fees generated by cases that the adjuster assists in settling. In the Panels view the adjuster's compensation is tied directly to particular matters. It is the Panel's opinion that the compensation proposal presented in this inquiry is a fee-sharing arrangement with a nonlawyer. See N.Y. State Ethics Op. 733 (2000) (law firm may compensate non lawyer employee based on profit-sharing arraignment, but may not pay employee percentage of fees or profits attributable to particular matters; Utah Ethics Op. 02-07 (2002) (compensation plan for nonlawyer may include legal fees if compensation is not tied to specific cases.)

The Panel concludes that the law firm's proposed compensation arrangement, which bases the adjuster/paralegal's bonus on attorney's fees that are generated by the particular cases that the adjuster/paralegal assists in settling, is a fee-sharing arrangement with a nonlawyer, and violates Rule 5.4(a).